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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,977	08/04/2003	John M. Swant	CING-121	6951

39013 7590 03/23/2007  
MOAZZAM & ASSOCIATES, LLC  
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MCLEAN, VA 22102

EXAMINER

PHAM, TUAN

ART UNIT PAPER NUMBER

2618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/23/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/634,977	SWANT, JOHN M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	TUAN A. PHAM	2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see Applicant's remark, filed on 12/22/2006, with respect to the rejection(s) of claim(s) 1-17 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Zerlan et al. (U.S. Patent No.: 7,010,295).

### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 6, 9, and 14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claim raises a question as to whether the claim is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of statutory subject matter under 35 U.S.C. 101.

Claims 1, 6, 9, and 14, claims the non-statutory subject matter of a program. Data structures not claimed as embodied in computer-readable media are functional descriptive material per se and are not statutory because they are not capable of causing functional change in the computer. See, e.g., Warmerdam, 33 F.3d at 1361, 31 USPQ2d at 1754 (claim to a data structure per se held nonstatutory). Therefore, since

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the claimed programs are not tangibly embodied in a physical medium and encoded on a computer- readable medium then the Applicants has not complied with 35 U.S.C 101.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiukkonen et al. (U.S. Pub. No.: 2004/0203466, hereinafter, "Kiukkonen") in view of Zerlan et al. (U.S. Patent No.: 7,010,295, hereinafter, "Zerlan").**

**Regarding claim 15**, Kiukkonen teaches a receiver test unit, comprising:

a power measurement device (see figure 1, receiver part, [0026], the receiver part estimate the power level of receiving. It is obvious that the receiver part is included a power measurement),

an attenuator coupled to the power measurement device (see figure 5, attenuator 514, and 518), and

a controller coupled to the attenuator (see figure 5, controller 500, [0033-0036]).

It should be noticed that Kiukkonen fails to teach a controller coupled to the mobile station, and the controller is programmable to initiate a communication link via the mobile station to a remote device and transmit a predetermined test message to

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said remote device. However, Zerlan teaches such features (see figure 1, figure 3, test host 12, sending mobile 14, processor 32, MSC 22, col.3, ln.50-59).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teaching of Zerlan into view of Kiukkonen in order to provide a test procedure that is more consistent, time efficient, and repeatable as suggested by Zerlan at col.1, ln.55-60.

**Regarding claim 16**, Kiukkonen further teaches a power measurement is capable of being coupled between a receiver-under-test and antenna (see figure 5, the receiver part estimate the power level of receiving. It is obvious that the receiver part is included a power measurement, [0033-0036]).

**Regarding claim 17**, Kiukkonen further teaches the power measurement device measures the received signal power of the predetermined message at a point prior to a receiver-under-test's input (see [0026]).

### **Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan A. Pham whose telephone number is (571) 272-8097. The examiner can normally be reached on Monday through Friday, 8:30 AM-5:30 PM.

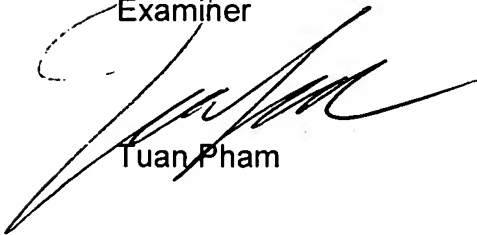
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew Anderson can be reached on (571) 272-4177. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have question on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Art Unit 2618  
March 20, 2007  
Examiner



Tuan Pham

Supervisory Patent Examiner  
Technology Center 2600



Matthew Anderson